

# House Study Bill 716 - Introduced

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON SWAIM)

## A BILL FOR

- 1 An Act providing for the regulation of consumer approval
- 2 transactions, and providing penalties.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 537.3501, Code 2009, is amended to read  
2 as follows:

3 **537.3501 ~~Door-to-door sales~~ Consumer approval transactions.**

4 In a consumer credit sale or a sale in which the goods  
5 or services are paid for in whole or in part by a lender  
6 credit card or a consumer loan in which the lender is subject  
7 to defenses arising from the sale under section 537.3405,  
8 a consumer has, in addition to all the rights and remedies  
9 provided by chapter ~~555A~~ 555, a cause of action under section  
10 537.5201, subsection 1, and the administrator has all powers  
11 granted under article 6, part 1, to enforce the provisions of  
12 chapter ~~555A~~ 555.

13 Sec. 2. Section 551A.3, subsection 4, paragraph b,  
14 subparagraph (7), Code 2009, is amended to read as follows:

15 (7) The cancellation statement appearing in section  
16 ~~555A.3~~ 555.3.

17 Sec. 3. Section 551A.6, Code 2009, is amended to read as  
18 follows:

19 **551A.6 Cancellation of contract.**

20 The purchaser has the right to cancel a contract with a  
21 seller for a business opportunity for any reason at any time  
22 within ~~three~~ five business days of the date the purchaser signs  
23 the contract or the date the contract is accepted by the seller  
24 whichever is later. The notice of the right to cancel, the  
25 seller's obligation to provide the purchaser with cancellation  
26 forms, and the procedures to be followed when a contract  
27 is canceled shall be the same as the procedures in chapter  
28 ~~555A~~ 555 for ~~door-to-door sales~~ consumer approval transactions.

29 Sec. 4. Section 552A.3, Code 2009, is amended to read as  
30 follows:

31 **552A.3 Right of cancellation — requirement of writing.**

32 The requirements of sections ~~555A.1 through 555A.5~~ 555.1  
33 through 555.6, relating to ~~door-to-door sales~~ consumer approval  
34 transactions, shall apply to sales of buying club memberships,  
35 irrespective of the place or manner of sale or the purpose for

1 which they are purchased. In addition to the requirements of  
2 chapter ~~555A~~ 555, a contract shall not be enforceable against  
3 a person acquiring a membership in a buying club unless the  
4 contract is in writing and signed by the purchaser.

5 Sec. 5. NEW SECTION. 555.1 Definitions.

6 As used in this chapter, unless the context otherwise  
7 requires:

8 1. "*Business day*" means any calendar day except Saturday,  
9 Sunday, or a public holiday, including holidays observed on  
10 Mondays.

11 2. a. "*Consumer approval transaction*" means a transaction  
12 for the sale of consumer goods or services which is  
13 characterized by all of the following:

14 (1) Initiation by face-to-face solicitation of a customer  
15 away from a regular place of business of the seller or by a  
16 mail or telephone solicitation from the seller directed to the  
17 customer.

18 (2) Consummation of the sale or submission by a customer  
19 of an offer to contract or other writing evidencing the  
20 transaction away from a regular place of business of the  
21 seller.

22 (3) Payment in the form of an extension of credit or through  
23 a cash transaction in which the purchase price the customer  
24 pays exceeds twenty-five dollars.

25 b. "*Consumer approval transaction*" does not include any of  
26 the following transactions:

27 (1) A transaction made pursuant to prior negotiations  
28 in the course of a visit by the buyer to a retail business  
29 establishment having a fixed permanent location where the  
30 goods are exhibited or the services are offered for sale on a  
31 continuing basis.

32 (2) A transaction in which the consumer is accorded the  
33 right of rescission by the provisions of the federal Consumer  
34 Credit Protection Act, 15 U.S.C. § 1635, or rules issued  
35 pursuant to this chapter.

1       (3) A transaction pertaining to the sale or lease or  
2 listing for sale of real property, to the sale of insurance  
3 or a prepaid health service plan, to the sale of securities  
4 or commodities by a broker-dealer registered with the federal  
5 securities and exchange commission, to a catalog sale that is  
6 not accompanied by any other solicitation, or to a consumer  
7 loan, as defined in section 537.1301, conducted and consummated  
8 entirely by mail.

9       (4) A door-to-door sale in which the buyer has initiated  
10 the contact and specifically requested the seller to visit  
11 the buyer's home for the purpose of repairing or performing  
12 maintenance upon the buyer's personal property. If in the  
13 course of such a visit, the seller sells the buyer the right  
14 to receive additional consumer goods or services other  
15 than replacement parts necessarily used in performing the  
16 maintenance or in making the repairs, the sale of those  
17 additional goods or services do not fall within this exclusion.

18       *c. "Consumer approval transaction"*, irrespective of the  
19 place or manner of sale, also includes either of the following:

20       (1) A sale of funeral services or funeral merchandise  
21 regulated under chapter 523A.

22       (2) A sale of a social referral service or an ancillary  
23 service. For purposes of this subparagraph, *"social referral*  
24 *service"* means a service for a fee providing matching or  
25 introduction of individuals for the purpose of dating,  
26 matrimony, or general social contact not otherwise prohibited  
27 by law, and *"ancillary service"* means goods or services directly  
28 or indirectly related to or to be provided in connection with a  
29 social referral service.

30       3. *"Consumer goods or services"* means goods or services  
31 purchased, leased, or rented primarily for personal, family,  
32 or household purposes, including courses of instruction or  
33 training regardless of the purpose for which they are taken.

34       4. *"Door-to-door sale"* means a consumer approval transaction  
35 in which the seller or the seller's representative personally

1 solicits the sale at the buyer's residence, including,  
2 notwithstanding subsection 2, paragraph "a", subparagraph (1),  
3 those in response to or following an invitation by the buyer.

4 5. "*Place of business*" means the main or permanent branch  
5 office or local address of a seller.

6 6. "*Purchase price*" means the total price paid or to be paid  
7 for the consumer goods or services, including all interest and  
8 service charges.

9 7. "*Seller*" means any person engaged in the sale of consumer  
10 goods or services pursuant to a consumer approval transaction.

11 Sec. 6. NEW SECTION. 555.2 **Contract.**

12 A seller shall furnish the buyer with a fully completed  
13 receipt or copy of any contract pertaining to a consumer  
14 approval transaction sale at the time of its execution, which  
15 shows the date of the transaction and contains the name and  
16 address of the seller, and in immediate proximity to the space  
17 reserved in the contract for the signature of the buyer or on  
18 the front page of the receipt if a contract is not used and in  
19 boldface type of a minimum size of ten points, a statement in  
20 substantially the following form:

21 **You, the buyer, may cancel this transaction at any time**  
22 **prior to midnight of the fifth business day after the date of**  
23 **this transaction. See the attached right to cancel form for an**  
24 **explanation of this right.**

25 Sec. 7. NEW SECTION. 555.3 **Right to cancel — customer**  
26 **notification.**

27 1. Except as provided in subsection 4, in addition to any  
28 other right to revoke an offer, to rescind a transaction, or to  
29 exercise any remedy for breach by the seller, a buyer has the  
30 right to cancel a consumer approval transaction until midnight  
31 on the fifth business day following receipt by the buyer of the  
32 notice required pursuant to this section.

33 2. A seller shall furnish to a buyer, at the time the buyer  
34 signs a consumer approval transaction contract or otherwise  
35 agrees to purchase consumer goods or services from the seller

1 pursuant to a consumer approval transaction, a completed form  
2 in duplicate, captioned "Buyer's Right To Cancel", which shall  
3 contain in ten point boldface type the following information  
4 and statements:

5 BUYER'S RIGHT TO CANCEL

6 .....

7 (enter date of transaction)

8 You may cancel this transaction, without any penalty or  
9 obligation, within five business days from the above date.

10 If you cancel, any property traded in, any payments made by  
11 you under the contract or sale, and any negotiable instrument  
12 executed by you will be returned within ten business days  
13 following receipt by the seller of your cancellation notice, and  
14 any security interest arising out of the transaction will be  
15 canceled.

16 If you cancel, you must return to the seller, in substantially  
17 as good of condition as when received, within twenty business  
18 days any goods delivered to you under this contract or sale; or  
19 you may if you wish, comply with the instructions of the seller  
20 regarding the return shipment of the goods within twenty business  
21 days at the seller's expense and risk.

22 If the seller does not pick them up within twenty days  
23 following their return, you may regain possession or dispose of  
24 the goods without any further obligation.

25 To cancel this transaction, mail or deliver a signed and  
26 dated copy of this cancellation notice or any other written  
27 notice, or send a telegram, to ....., (Name of seller)  
28 at ..... (Address of seller's place of business) not  
29 later than midnight of ..... (Date).

30 I hereby cancel this transaction.

31 .....

32 (Date)

33 .....

34 (Buyer's signature)

35 3. A seller who in the ordinary course of business regularly

1 uses a language other than English in any advertising or other  
2 solicitation of customers or in any printed forms for use by  
3 customers or in any face-to-face negotiations with customers  
4 shall provide the contract and right to cancel form pursuant  
5 to this section to a customer whose principal language is such  
6 other language both in English and in the other language.

7 4. Notice of cancellation shall be given by regular mail  
8 addressed to the seller and shall be considered given at the  
9 time of mailing. If the consumer goods or services which are  
10 the subject of the transaction must be custom made in the  
11 ordinary course of business and are unique to the transaction,  
12 the seller may require that a notice of cancellation be made by  
13 registered or certified mail.

14 5. A buyer may not cancel a consumer approval transaction if  
15 any of the following applies:

16 a. The buyer has determined that a delay of five business  
17 days in performance of the seller's obligation under the  
18 transaction will jeopardize the welfare, health, or safety of  
19 natural persons or endanger property which the buyer owns or  
20 for which the buyer is responsible, and the buyer furnishes the  
21 seller a separate dated and signed personal statement modifying  
22 or waiving the buyer's right of cancellation.

23 b. The seller in good faith substantially begins performance  
24 of the contract before the buyer gives notice of cancellation.

25 c. If the consumer approval transaction involved the sale  
26 of consumer goods which cannot be returned to the seller in  
27 substantially as good of condition as when received by the  
28 buyer.

29 Sec. 8. NEW SECTION. 555.4 Duties of seller.

30 A seller shall, in connection with a consumer approval  
31 transaction, perform or comply with the following:

32 1. Furnish two copies of the right to cancel form to the  
33 buyer as provided in section 555.3, and complete both copies by  
34 entering the name of the seller, the address of the seller's  
35 place of business, the date of the transaction, and the date,

1 not earlier than the fifth business day following the date  
2 of the transaction, by which the buyer may give notice of  
3 cancellation.

4 2. Not include in any contract or receipt any confession of  
5 judgment or any waiver of any of the rights to which the buyer  
6 is entitled under this chapter including specifically the right  
7 to cancel the sale in accordance with the provisions of this  
8 chapter.

9 3. Inform each buyer orally, at the time the buyer signs the  
10 contract or purchases the consumer goods or services, of the  
11 buyer's right to cancel, in the event of a consumer approval  
12 transaction conducted as a door-to-door sale, or away from a  
13 regular place of business of the seller, or as a telephone  
14 solicitation.

15 4. Not misrepresent in any manner the buyer's right to  
16 cancel.

17 5. Honor any valid notice of cancellation by a buyer and,  
18 within ten business days after the receipt of notice, refund  
19 all payments made under the contract or sale, return any goods  
20 or property traded in, in substantially as good of condition  
21 as when received by the seller, and cancel and return any  
22 negotiable instrument executed by the buyer in connection  
23 with the contract or sale and take any action necessary or  
24 appropriate to terminate promptly any security interest created  
25 in the transaction.

26 6. Not negotiate, transfer, sell, or assign any note or  
27 other evidence of indebtedness to a finance company or other  
28 third party prior to midnight of the seventh business day  
29 following the day the contract was signed or the consumer goods  
30 or services were purchased.

31 7. Within ten business days of receipt of the buyer's notice  
32 of cancellation, notify the buyer whether the seller intends to  
33 repossess or to abandon any shipped or delivered goods.

34 **Sec. 9. NEW SECTION. 555.5 Duties of buyer.**

35 A buyer shall, in connection with a consumer approval



1 transaction, perform or comply with the following:

2 1. Return property subject to a canceled consumer approval  
3 transaction within a reasonable time period following  
4 discharge of the seller's responsibilities under section 555.4,  
5 subsection 5, not to exceed twenty days.

6 2. Take reasonable care of delivered property in the  
7 buyer's possession and subject to a canceled consumer approval  
8 transaction from the time of delivery until its return to the  
9 seller.

10 3. If a seller does not take possession of the property  
11 within twenty days after its return by the buyer, ownership  
12 of the property vests in the buyer without obligation on the  
13 buyer's part to pay for it.

14 4. If a seller has performed any services pursuant to a  
15 consumer approval transaction prior to its cancellation, the  
16 seller shall not be entitled to any compensation for those  
17 services.

18 Sec. 10. NEW SECTION. 555.6 **Effect on indebtedness.**

19 Recision of any contract pursuant to this chapter or the  
20 failure to provide a copy of the contract to the buyer as  
21 required by this chapter shall void any contract, note,  
22 instrument, or other evidence of indebtedness executed  
23 or entered into in connection with the contract and shall  
24 constitute a complete defense in any action based on the  
25 contract, note, instrument or other evidence of indebtedness  
26 brought by the seller or the seller's successors or assigns  
27 unless a successor or assignee of the seller after the seventh  
28 business day following the day the contract was signed has  
29 detrimentally relied upon a representation of the buyer that  
30 the contract has not been rescinded. This section shall not  
31 affect the rights of holders in due course of checks made by  
32 the buyer.

33 Sec. 11. NEW SECTION. 555.7 **Penalties.**

34 1. A seller who violates a provision of this chapter is  
35 guilty of a simple misdemeanor.

1     2. A violation of this chapter is a violation of section  
2 714.16, subsection 2, paragraph "a".

3     Sec. 12. Section 714H.3, subsection 2, paragraph d, Code  
4 Supplement 2009, is amended to read as follows:

5     d. Chapter 555A 555.

6     Sec. 13. REPEAL. Chapter 555A, Code 2009, is repealed.

7                                   EXPLANATION

8     This bill repeals provisions currently regulating  
9 door-to-door sales practices, and replaces them with an  
10 expanded regulatory mechanism governing consumer approval  
11 transactions. The primary focus of the bill is to confer on a  
12 buyer in a consumer approval transaction a five-business-day  
13 right to cancel the transaction.

14     The bill defines a consumer approval transaction to mean a  
15 transaction for the sale of consumer goods or services which  
16 is initiated by a face-to-face solicitation of a customer away  
17 from a regular place of business of the seller or by a mail  
18 or telephone solicitation from the seller directed to the  
19 customer, finalized away from a regular place of business of  
20 the seller, and involving payment in the form of an extension  
21 of credit or through a cash transaction in which the purchase  
22 price the customer pays exceeds \$25.

23     The bill excludes from this definition several types  
24 of transactions. A transaction made pursuant to prior  
25 negotiations in the course of a visit by the buyer to a retail  
26 business establishment having a fixed permanent location, and  
27 a transaction in which the consumer is accorded the right  
28 of rescission by specified federal provisions, are excluded.  
29 Also excluded are sales or leases of real property, sales  
30 of insurance and prepaid health service plans, sales of  
31 securities or commodities by a broker-dealer registered with  
32 the securities and exchange commission, catalog sales that are  
33 not accompanied by any other solicitation, and a consumer loan  
34 as defined in Code section 537.1301 conducted and consummated  
35 entirely by mail. The bill also excludes a door-to-door sale

1 in which the buyer has initiated the contact and specifically  
2 requested the seller to visit the buyer's home for the purpose  
3 of repairing or performing maintenance upon the buyer's  
4 personal property, but additional solicitations made in the  
5 course of such a visit will fall within the definition. The  
6 bill expressly includes a sale of regulated funeral services  
7 or funeral merchandise or of a social referral service or an  
8 ancillary service within the definition, irrespective of the  
9 place or manner of sale.

10 The bill requires a seller in a consumer approval  
11 transaction to furnish the buyer with a fully completed  
12 receipt or copy of any contract pertaining to the transaction  
13 which shows the date of the transaction, contains the name  
14 and address of the seller, and in boldface type informs the  
15 buyer of the buyer's right to cancel the transaction prior  
16 to midnight of the fifth business day after the transaction  
17 date. The contract or receipt shall be accompanied by a  
18 similarly boldfaced right to cancel form specifying rights,  
19 responsibilities, and time frames applicable to a transaction  
20 cancellation. The form indicates that the seller must  
21 return to the buyer any property traded in, payments made,  
22 or negotiable instruments executed within 10 business days  
23 following receipt of the cancellation notice, and cancel any  
24 security interest arising out of the transaction. The form  
25 also indicates that the buyer must return to the seller, in  
26 substantially as good of condition as when received, within 20  
27 business days any goods delivered under the contract or sale.  
28 Provision is also made for a buyer regaining possession of any  
29 goods not claimed by the seller within 20 business days.

30 The bill addresses alternate language utilization in  
31 providing the right to cancel notification, and states that  
32 cancellation shall be given by regular mail addressed to the  
33 seller and shall be considered given at the time of mailing,  
34 unless more stringent mailing requirements applicable to unique  
35 goods or services are specified.

1     The bill provides that cancellation is not an option  
2 for a buyer in circumstances where a buyer has determined  
3 that a delay of five business days in performance of the  
4 seller's obligation under the transaction will have negative  
5 consequences and modifies or waives the buyer's right to cancel  
6 where the seller in good faith substantially begins performance  
7 of the contract before the buyer gives notice of cancellation,  
8 or where the consumer approval transaction involved the sale of  
9 goods which cannot be returned to the seller in substantially  
10 as good of condition as when received by the buyer.

11    The bill imposes duties which must be complied with on the  
12 part of both the seller and the buyer. A seller is required,  
13 among other duties, to furnish two completed copies of the  
14 right to cancel form to the buyer, not include specified  
15 waivers of rights therein, orally inform the buyer of the  
16 buyer's right to cancel unless the transaction is pursuant  
17 to mail, not misrepresent in any manner the buyer's right to  
18 cancel, and honor any valid notice of cancellation within  
19 the specified time frames. A buyer is required to return  
20 property subject to a canceled consumer approval transaction  
21 within a reasonable time period following discharge of the  
22 seller's responsibilities not to exceed 20 days, and to take  
23 reasonable care of delivered property in the buyer's possession  
24 and subject to a canceled consumer approval transaction from  
25 the time of delivery until its return to the seller. The bill  
26 provides that if a seller does not take possession of the  
27 returned property within 20 days after its return by the buyer,  
28 ownership of the property vests in the buyer without obligation  
29 on the buyer's part to pay for it, and further that if a seller  
30 has performed any services pursuant to a transaction prior  
31 to its cancellation, the seller shall not be entitled to any  
32 compensation for those services.

33    The bill provides that rescission of a consumer approval  
34 transaction contract, or the failure to provide a copy of  
35 the contract to the buyer, shall void any contract, note,

1 instrument, or other evidence of indebtedness executed  
2 or entered into in connection with the contract and shall  
3 constitute a complete defense in any action based on the  
4 contract, note, instrument, or other evidence of indebtedness  
5 brought by the seller or the seller's successors or assigns  
6 unless a successor or assignee of the seller after the seventh  
7 business day following the day the contract was signed has  
8 detrimentally relied upon a representation of the buyer that  
9 the contract has not been rescinded.

10     The bill provides that a seller violating the bill's  
11 provisions is guilty of a simple misdemeanor, punishable by  
12 confinement for no more than 30 days or a fine of at least \$65  
13 but not more than \$625 or by both. Additionally, a violation  
14 of the bill's provisions constitutes an unlawful practice  
15 under Code section 714.16, subsection 2, paragraph "a",  
16 punishable by a civil penalty of up to \$40,000 per violation,  
17 and an additional civil penalty of up to \$5,000 per day for  
18 intentional violations of court orders or injunctions.

19     The bill makes conforming changes and modifications to other  
20 appropriate Code sections consistent with the repeal of Code  
21 chapter 555A and replacement with Code chapter 555.